

EXHIBIT 3

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

MONSTER ENERGY COMPANY,)
)
)
PLAINTIFF,)
)
V.) ED CV 18-01882-JGB(SHK)
)
) JANUARY 13, 2020
VITAL PHARMACEUTICALS, INC.,) RIVERSIDE, CALIFORNIA
ET AL.,)
) (11:02 A.M. TO 11:56 A.M.)
DEFENDANTS.)

HEARING

BEFORE THE HONORABLE SHASHI H. KEWALRAMANI
UNITED STATES MAGISTRATE JUDGE

APPEARANCES: SEE NEXT PAGE
COURT REPORTER: RECORDED; COURTSMART
COURTROOM DEPUTY: D. CASTELLANOS
TRANSCRIBER: DOROTHY BABYKIN
COURTHOUSE SERVICES
1218 VALEBROOK PLACE
GLEN DORA, CALIFORNIA 91740
(626) 963-0566

PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING;
TRANSCRIPT PRODUCED BY TRANSCRIPTION SERVICE. Exhibit 3, Page 6

1 APPEARANCES:

2 FOR THE PLAINTIFF MONSTER ENERGY COMPANY:

3 HUESTON HENNIGAN LLP
4 BY: MICHAEL HAYES TODISCO
VARUN BEHL
ATTORNEY AT LAW
5 523 WEST 6TH STREET
SUITE 400
6 LOS ANGELES, CALIFORNIA 90014

7
SHOOK HARDY & BACON
8 BY: EVA WEILER
ATTORNEY AT LAW
9 5 PARK PLACE
SUITE 1600
10 IRVINE, CALIFORNIA 92614

11 FOR THE DEFENDANT VITAL PHARMACEUTICALS, INC.:

12
13 GORDON & REES LLP
BY: TIMOTHY K. BRANSON
14 ATTORNEY AT LAW
633 WEST 5TH STREET
15 52ND FLOOR
LOS ANGELES, CALIFORNIA 90071

16
17 GORDON & REES SCULLY MANSUKHANI LLP
BY: MICHAEL D. KANACH
18 ATTORNEY AT LAW
275 BATTERY STREET
19 SUITE 2000
SAN FRANCISCO, CALIFORNIA 94111
20 (TELEPHONICALLY)

1 THE COURT: (READING.)

2 ALL COMMUNICATIONS BETWEEN SHOOK HARDY OR MR. MILES
3 AND THE U.S. FOOD AND DRUG ADMINISTRATION RELATED TO
4 VPX OR OWOC OR BANG REGARDLESS OF DATE.

5 MR. TODISCO: SO, I UNDERSTAND FROM SHOOK THAT THERE
6 ARE NO DOCUMENTS RESPONSIVE TO THIS RFP, AND THAT HAS BEEN
7 REPRESENTED TO MR. KANACH ON --

8 THE COURT: OKAY.

9 MR. TODISCO: -- THE PHONE.

10 THE COURT: ALL RIGHT.

11 MR. KANACH, YOU GOT THAT REPRESENTATION?

12 MR. KANACH: WHAT WE HEARD FROM SHOOK HARDY --

13 THIS IS MR. KANACH ON THE PHONE --

14 -- WHAT WE HEARD FROM SHOOK HARDY IS THAT THEY
15 STOPPED ALL SEARCHES UNTIL THE COURT COMPELLED THEM TO PRODUCE.
16 THEY WOULD NOT TAKE A POSITION IN WRITING TO US THAT THEY HAD
17 COMPLETED THEIR SEARCH WITH RESPECT TO ANY OF THE DOCUMENT --
18 SPECIFIC DOCUMENT REQUESTS.

19 SO, IF -- IF THEY DO TELL US THAT THEY'VE COMPLETED
20 THEIR REVIEW AND THAT THERE ARE NO DOCUMENTS, THAT WOULD
21 OBVIOUSLY BE SUFFICIENT FOR OUR PURPOSES. BUT THEY HAVE NOT
22 PUT THAT IN WRITING TO US AT THIS TIME.

23 THE COURT: MR. TODISCO, YOU GUYS WANT TO PUT THAT IN
24 WRITING?

25 MR. TODISCO: I WOULD WANT TO CONFER WITH COUNSEL FOR

1 SHOOK. BUT AS TO RFP 1, BASED ON WHAT SHOOK HAS DONE TO DATE,
2 WHICH I BELIEVE IS MORE THAN A REASONABLE SEARCH UNDER --

3 THE COURT: WELL, YOU NOW INSERTED A PHRASE IN THERE
4 "WHAT SHOOK HAS DONE TO DATE."

5 MR. TODISCO: YEAH. SORRY. WHAT I WAS SAYING IS
6 WHAT SHOOK HAS DONE WOULD BE -- WOULD QUALIFY AS A REASONABLE
7 SEARCH, I BELIEVE, BASED ON WHAT I'VE HEARD OVER THE PHONE AND
8 WOULD HAVE MET THEIR OBLIGATIONS TO SEARCH FOR THESE DOCUMENTS.

9 BUT I DON'T WANT TO SPEAK FOR THEM. I UNDERSTAND
10 THAT THEY'VE DONE A FAIRLY BROAD --

11 THE COURT: MS. WEILER JUST SAID YOU'RE SPEAKING FOR
12 THEM.

13 MS. WEILER: SURE, YOUR HONOR.

14 YES, WE HAVE DONE WHAT I WOULD QUALIFY AS A
15 REASONABLE SEARCH FOR THESE DOCUMENTS TO DATE. AND NO
16 RESPONSIVE DOCUMENTS TO RFP NUMBER 1 HAVE BEEN LOCATED.

17 THE COURT: OKAY.

18 YOU GOT THAT ON THE RECORD, MR. KANACH.

19 SO, LET'S MOVE ON TO RFP NUMBER 2.

20 ALL DOCUMENTS AND COMMUNICATIONS BETWEEN
21 YOU AND THE U.S FOOD AND DRUG ADMINISTRATION RELATED
22 TO MONSTER PRODUCTS REGARDLESS OF DATE.

23 MR. KANACH, I DON'T SEE THE RELEVANCY OF THIS
24 REQUEST.

25 MR. BRANSON: YOUR HONOR, THE NATURE OF THIS REQUEST

1 IS TO -- FOR CONTEXT TO SEE IF MONSTER IS TAKING INCONSISTENT
2 POSITIONS WITH RESPECT TO ITS OWN PRODUCTS, WHICH IN -- AT
3 LEAST IN AT LEAST ONE CASE THE PRODUCT IS VERY SIMILAR --

4 THE COURT: ARE YOU TALKING AN UNCLEAN HANDS DEFENSE?

5 MR. BRANSON: YES, SIR.

6 THE COURT: OKAY. WE'VE ALREADY RULED ON THAT. IT'S
7 NOT RELEVANT.

8 MR. BRANSON: OKAY. VERY WELL.

9 THE COURT: WE'RE OVER IT. WE'RE DONE.

10 RFP NUMBER 3.

11 ALL COMMUNICATIONS BETWEEN YOU AND THE BURSOR &
12 FISHER LAW FIRM RELATED TO VPX OR OWOC OR BANG
13 REGARDLESS OF DATE.

14 OKAY. GO AHEAD, MR. TODISCO.

15 MR. TODISCO: MONSTER DOES NOT UNDERSTAND HOW
16 COMMUNICATIONS BETWEEN ITS COUNSEL AND A THIRD PARTY LAW FIRM
17 HAVE ANY RELEVANCE TO VPX'S DEFENSES OR TO MONSTER'S CLAIMS. I
18 DON'T BELIEVE THAT CONDUCT OF COUNSEL IS AT -- IS AT ISSUE
19 HERE.

20 MR. BRANSON: YOUR HONOR, TO GIVE YOU A LITTLE
21 CONTEXT FOR THIS.

22 THE COURT: SURE.

23 MR. BRANSON: AND FOR THE NEXT -- MOST OF THE REST OF
24 THEM.

25 THE COURT: SURE.

1 MR. BRANSON: ALL THESE ATTORNEYS ARE FOR THE MOST
2 PART PLAINTIFFS' ATTORNEYS AND FIRMS IN OTHER CASES THAT ARE
3 PENDING AGAINST MY CLIENT VPX CLASS ACTIONS, OTHER UNFAIR
4 COMPETITION CASE IN FLORIDA.

5 AT THE INCEPTION OF THIS PARTICULAR CASE, MR. MILES
6 MADE STATEMENTS TO THE MEDIA WHICH ESSENTIALLY SAID, YOU KNOW,
7 THIS IS JUST -- THIS IS JUST THE BEGINNING OF, YOU KNOW, WHAT
8 WE SEE AS MORE LITIGATION AT VPX. I THINK THE EXACT LANGUAGE
9 WAS:

10 THIS LAWSUIT IS JUST THE TIP OF THE ICEBERG -- WOULD
11 NOT BE SURPRISED IF THE FDA TOOK ACTION OR IF THERE
12 ARE OTHER CLASS ACTION LAWSUITS FILED.

13 WE HAVE REASON TO BELIEVE THAT MONSTER AND ITS
14 COUNSEL, PARTICULARLY MR. MILES, ARE COORDINATING AND
15 COOPERATING WITH THESE OTHER LAWYERS. AND IT'S NOT JUST THE
16 MEDIA STATEMENTS. WE HAVE OTHER EVIDENCE THAT SUGGESTS THAT
17 THAT'S HAPPENING.

18 SO, WE BELIEVE WE'RE ENTITLED TO SEE TO THE EXTENT
19 THAT MONSTER IS COOPERATING AND COORDINATING WITH THESE OTHER
20 ATTORNEYS ABOUT -- THESE ARE ABOUT OUR CLAIMS. THESE ARE --
21 THESE ARE ABOUT MY CLIENT AND OUR CLAIMS.

22 IF THESE ARE COORDINATING AND THEY'RE SHARING
23 INFORMATION THAT'S NOT PRIVILEGED -- MAYBE IT'S A FIGHT WHETHER
24 IT'S PRIVILEGED OR NOT. AND THEY DON'T SEEM TO KNOW IF IT IS.
25 BUT IF -- WE SHOULD BE ABLE TO SEE WHAT THOSE COMMUNICATIONS

1 THEY'RE KILLING US IN THE MARKET. WE NEED TO DO SOMETHING
2 ELSE.

3 THIS IS ALL SOMETHING I THINK WE SHOULD BE ABLE TO
4 SEE.

5 THE COURT: I DON'T SEE IT. I MEAN, BASED ON WHAT
6 I'VE HEARD, I DON'T SEE IT.

7 MR. KANACH, ANYTHING TO ADD?

8 MR. KANACH: YES, YOUR HONOR.

9 JUST FOR A LITTLE BIT MORE BACKGROUND HERE.

10 THE COURT: SURE.

11 MR. KANACH: OBVIOUSLY THE MONSTER CASE WAS FILED
12 FIRST. ALL THE OTHER CASES WERE FILED SUBSEQUENTLY.

13 ALSO, THE MAJORITY OF THOSE CLASS ACTION CASES HAVE
14 BEEN DISMISSED, SOME OF WHICH WERE VOLUNTARILY DISMISSED.

15 IT'S JUST -- THE STRENGTH OF THOSE CASES IS VERY
16 SIMILAR TO THE STRENGTH OF THESE CASES -- THIS CASE HERE.
17 WITH RESPECT TO THE -- ALL THE CLAIMS THAT THE PLAINTIFF IS
18 MAKING THESE ARE REALLY COPYCAT CASES THAT WE THINK ARE A
19 STRATEGIC -- YOU KNOW, FOR COMPETITIVE REASONS. THEY ARE NOT
20 FILING THIS LAWSUIT TO ACTUALLY GET TO THE ROOT OF THE -- YOU
21 KNOW, IS THERE THIS MUCH CREATINE IN IT TO SUPPORT THIS CLAIM.

22 THIS IS A STRATEGIC COORDINATION OF MONSTER'S
23 COUNSEL. AND THAT'S WHERE WE WANT TO GET THE INFORMATION.

24 BECAUSE IF THE DEFENDANTS ARE SUCCESSFUL IN DEFENDING
25 THIS CASE, AND WE NEED TO, YOU KNOW, SHOW THAT THIS CASE WAS

1 EXCEPTIONAL AND ALL THE OTHER CASES ARE DISMISSED, OR THAT THE
2 DEFENDANT VPX WINS ALL THOSE CASES, IT WILL JUST BE EVIDENCE TO
3 SHOW THAT THIS WAS ALL COORDINATED, NOT BECAUSE OF THE STRENGTH
4 OF THEIR CLAIMS, BUT BECAUSE OF -- FOR COMPETITIVE REASONS ON
5 BEHALF OF MONSTER.

6 THE COURT: SOUNDS LIKE SOME SORT OF A SLAPP ACTION
7 OR AN ANTISLAPP. IF THAT'S --

8 MR. KANACH: AND JUST, YOUR HONOR, WHAT WE'VE HEARD
9 FROM SHOOK HARDY DURING OUR EXTENSIVE MEET AND CONFER, BESIDES
10 THE FACT THAT THEY SAID THEY WEREN'T COMPLETE WITH THEIR
11 REVIEW, THEY TOLD US THAT THERE WAS A SINGLE DOCUMENT THAT THEY
12 THOUGHT WAS NOT REALLY -- I FORGET WHAT WORD THEY USED, MAYBE
13 SUBSTANTIVE OR RELEVANT -- THAT WAS RESPONSIVE TO THESE.

14 AND WE SAID, WELL, IF IT'S NOT REALLY A BIG DEAL, CAN
15 YOU PRODUCE IT TO US SO WE CAN SEE IT BEFORE WE TAKE THIS TO
16 THE COURT. AND THEY REFUSED TO SHOW IT TO US.

17 AND WE ASKED THEM TO PUT -- YOU KNOW, IF THERE ARE SO
18 FEW DOCUMENTS, COULD THEY PUT IT ON A PRIVILEGE LOG. AND THEY
19 REFUSED TO DO THAT AS WELL.

20 OBVIOUSLY, IF THERE IS A COMMON INTEREST PRIVILEGE
21 THAT THESE PARTIES ARE ALL COORDINATING THEIR ATTACK AND
22 THEY'RE PLAINTIFF'S CLAIMS, SOME OF THOSE MAY FALL UNDER COMMON
23 INTEREST. SOME OF THOSE MAY NOT.

24 AND AT A MINIMUM, WE WANT TO BE ABLE TO SEE ON A
25 PRIVILEGE LOG -- EVEN IF IT'S ONLY ONE DOCUMENT, WE WANT TO BE

1 MR. BRANSON: THROUGHOUT HISTORY, THERE HAVE BEEN
2 SEVERAL.

3 THE COURT: OKAY. I MEAN, DO YOU THINK IT'S
4 APPROPRIATE FOR THEM TO SERVE THIRD-PARTY SUBPOENAS TO EACH OF
5 THOSE LAW FIRMS AND SAY PROVIDE ALL DOCUMENTS RELATED TO
6 MONSTER?

7 BECAUSE AT YOUR CORE YOU'RE SAYING YOU CAN'T COMPETE
8 -- THEY CAN'T COMPETE WITH US IN THE MARKETPLACE. THEREFORE,
9 THEY'RE GOING TO COME BACK AT US THROUGH THIS BUSINESS STRATEGY
10 OF LAWSUITS AND CLASS ACTIONS.

11 SIMILARLY, THEY MAY SAY, WELL, YOU KNOW WHAT, THEY
12 DON'T LIKE MONSTER. AND THEY'RE GOING TO DO -- THEY'RE GOING
13 TO DO WHATEVER THEY WANT TO TAKE US OUT. BECAUSE THAT GOES TO
14 THE MOTIVATION OF -- OF WHATEVER.

15 I MEAN, WE GET -- YOU GET MORE AND MORE FAR AFIELD OF
16 THE CLAIMS THAT ARE BEING MADE HERE.

17 THE CLAIMS THAT ARE BEING MADE HERE ARE RELATED TO
18 BANG AND CREATIVE, RIGHT? -- BANG AND CREATIVE.

19 AND IT'S BEING EXPANDED -- AND I THINK FAIRLY SO YOU
20 CAN DO THIS IN THE DEPOSITIONS OF WHAT'S YOUR MOTIVATION FOR
21 THIS. BECAUSE TO SHOW THAT THIS BANG AND CREATIVE CASE IS A
22 SUBTERFUGE RATHER THAN AN ACTUAL VIABLE CLAIM. AND THAT MAY BE
23 THE CASE. BUT I DON'T KNOW THAT.

24 AND THAT'S -- YOU KNOW, I DON'T KNOW WHEN MSJ
25 DEADLINES ARE COMING UP. AND YOU'LL HAVE TO DECIDE THAT.

1 THEY HAVEN'T COMMITTED EITHER WAY WHETHER THEY'RE
2 GOING TO FILE ONE, BUT WE DID GIVE THEM AN EXTENSION.

3 THE COURT: ARE YOU INVOLVED IN THAT CASE?

4 MR. BRANSON: PARDON ME? YES. YES.

5 THE COURT: OH, YOU ARE. OKAY. SO, YOU KNOW ABOUT
6 THAT CASE?

7 MR. BRANSON: I DO. I DO.

8 THE COURT: OKAY. AND, SO, CAN YOU -- CAN YOU SHED
9 SOME LIGHT ON WHAT'S GOING ON THERE.

10 MR. BRANSON: JUST GENERALLY IN THE CASE, OR?

11 THE COURT: NO. JUST ABOUT WITH RESPECT TO THIS
12 MOTION.

13 MR. BRANSON: WE --

14 THE COURT: OR A POTENTIAL MOTION.

15 MR. BRANSON: WE DID SERVE SIMILAR SUBPOENAS TO THE
16 SAME PARTIES IN -- IN FLORIDA. AND IT'S AT THE POINT WHERE WE
17 RECEIVED SOME WRITTEN OBJECTIONS SIMILAR TO WHAT WE DID HERE.

18 MOST EVERYONE HAS ASKED FOR MORE TIME TO RESPOND TO
19 US. EVERYONE IS GENERALLY TAKING THE SAME POSITION VAGUELY
20 THAT IT'S ATTORNEY-CLIENT OR WORK-PRODUCT OR COMMON INTEREST --
21 ONE OF -- YOU KNOW, OR SOME ASPECT OF THAT.

22 WE'VE BASICALLY BEEN COOPERATIVE IN GIVING PEOPLE
23 TIME TO SEARCH FOR THEIR DOCUMENTS. BUT NO MOTIONS -- WE DON'T
24 KNOW IF ANYONE IS GOING TO FILE ANYTHING OR HOW IT'S GOING TO
25 -- IT'S STILL PLAYING THROUGH.

C E R T I F I C A T E

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT
FROM THE ELECTRONIC SOUND RECORDING OF THE PROCEEDINGS IN THE
ABOVE-ENTITLED MATTER.

/S/ DOROTHY BABYKIN

1/21/20

FEDERALLY CERTIFIED TRANSCRIBER
DOROTHY BABYKIN

DATED